

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA.**

O.A. No. 394 of 2006

Date of order : 11.1.07

C O R A M

Hon'ble Ms. Sadhna Srivastava, Member (J)

Fakhruddin, S/o Late Abdul Majeed, Ex- Pilot Shunter under Loco Foreman, E.C. Railway, Samastipur, resident of Mohalla- Dharampur, New Colony, Ward No. 1, Samastipur.

....Applicant

By Advocate : Shri M.P. Dixit

Vs.

1. The Union of India through the General Manager, E.C. Railway, Hazipur
2. The Divisional Railway Manager, E.C. Railway, Samastipur.
3. The Senior Divisional Mechanical Engineer, E.C. Railway, Samastipur.
4. The Sr. Divisional Personnel Officer, E.C. Railway, Samastipur.
5. The Sr. Divisional Financial Manager, E.C. Railway, Samastipur.
6. The Loco Foreman (Diesel), E.C. Railway, Samastipur.

....Respondents

By Advocate : Shri R.N. choudhary

O R D E R

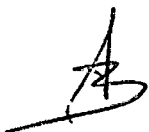
By Sadhna Srivastava, M (J):-

The applicant, Fakhruddin has filed this application seeking direction upon the respondents to fix the entire pensionary benefits, including the pension on the basic



pay of Rs. 6100/- instead of Rs. 5700/- and also to direct the respondents to pay all the arrears with interest due to wrong fixation of pension.

2. The case of the applicant is that he was appointed as Engine Cleaner in Railway Department on 31.5.1969. He was promoted to the post of Fireman II and Fireman grade I. Thereafter, he was promoted to the post of Pilot Shunter. The basic pay of the applicant on promotion to the post of Pilot Shunter was fixed at Rs. 5900/- which is evident from the pay slip of the applicant for the month of March, 2003 and May, 2003 (Annexure A/1 series). After getting annual increment for the year 2004 and 2005 his basic pay was fixed at Rs. 6100/- and accordingly, he superannuated while drawing the basic pay of Rs. 6100/- on 31.5.2005. After retirement the applicant received all the retiral dues except Rs. 20,000/- which has been withheld from DCRG and the same has not yet been paid to the applicant. After retirement the applicant came to know that his entire pensionary benefits including pension etc has been calculated and paid on the basic pay of Rs. 5700/- and not on the basic pay of Rs. 6100/- which he



was drawing at the time of superannuation. The applicant has filed representation followed by reminders but no action has been taken by the respondents and hence this OA.

3. The claim of the applicant is resisted by the respondents on the ground that due to erroneous calculation done in 1984 the applicant was retired on the basic pay of Rs. 6100/- per month. The said error was corrected vide letter dated 26.5.2005 (Annexure R/1) and his salary was fixed at the basic of Rs. 5700/- from 1.9.2004 instead of Rs. 6100/- per month. Due to this wrong pay fixation the applicant was overpaid Rs. 59273/- out of which the respondents have already recovered Rs. 24,649/- from the DCRG and bonus, and rest of the amount is still payable by the applicant. Thus, it is said that the matter involved related to the rectification of the administrative mistake and it did not lead to reduction of pay as a measure of punishment. Accordingly, the prayer is made to dismissed the OA.

4. The learned counsel for the applicant, on the other hand, contended that as per Rule 50 of the Railway Service (Pension) Rules, 1993, his pension as well as other

retiral benefits are to be calculated on the basis of average emoluments drawn by him during the last ten months of his service. At the time of retirement the applicant was drawing Rs. 6100/- as basic pay. He further submitted that during the entire service period the applicant was never awarded any punishment nor he was ever on leave without pay, hence the genuineness of the letter dated 26.5.2005 (R/I) has been disputed. It has been argued that the respondents cannot withhold or recover any amount from pensionary benefits towards overpayment, when there is no misrepresentation on behalf of the applicant.

5. Thus, from the pleadings of the parties it is clear that the applicant retired on 31.5.2005, the last basic salary drawn was Rs. 6100/- but his pension was fixed on the basis of last pay drawn at the pay of Rs. 5700/-. He has already received all the pensionary benefits on the basis of pay at Rs. 5700/-. It is also an admitted position that the respondents had withheld Rs. 20,000/- from DCRG and Rs. 4649/- payable as bonus amount to the applicant on the ground of excess payment of salary from 1984 to 2005.

6. The learned counsel for the applicant has placed reliance on a judgment reported in 2006 (1) PLJR page 139, Mahendra Prasad and Ors vs. State of Bihar and Anr and another case reported in 1999 (3) PLJR page 572 , Gupteshwar Pd vs. State of Bihar, wherein the Hon'ble Patna High Court has held that if excess payment had been made without their being any misrepresentation on the part of the employee, it is not open to the employer to recover the same. Further it has been held that the employee is entitled for fixation of post retirement benefits on the basis of salary on the date of retirement, notwithstanding its wrong fixation.


7. The learned counsel for the respondents submitted that the above decisions cannot be made applicable, and the excess amount paid has to be recovered. He also submitted that the final pension has been rightly fixed on the basis of last pay admissible to him.

8. In case of Sahib Ram Vs. State of Hariyana reported in 1995 (Suppl.) (1) SCC 18, the upgraded pay scale was given due to wrong construction of the relevant order by the authority concerned without any

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misrepresentation by the employee. The Hon'ble Supreme Court held that the excess payment made to the employee cannot be recovered.

9. In the instant case, the respondents, of course, have alleged that by mistake, the applicant's pay have wrongly been fixed in the year 1984 which has been rectified vide letter dated 26.5.2005, but there is nothing on record to show that the excess payment was made to the applicant. No notice either was given to the applicant to provide him an opportunity in this regard. Therefore, it is difficult for this Tribunal to hold that the applicant's pay was wrongly fixed in the year 1984. Thus, the respondents are not entitled to recover the amount of Rs. 59,273/-. So far as the cases of Mahendra Pd and Gupteshwar Pd (Supra) are concerned, those are similar to the instant case. The Hon'ble High Court has held that the petitioner was entitled for fixation of post retirement benefits on the basis of salary on the date of retirement, notwithstanding its wrong fixation by the Department. Hence in view of these decisions, the applicant is also entitled for fixation of the post retirement benefits on



the basis of the salary which, he, in fact, was drawing on the date of retirement, and the respondents were not entitled to recover the amount of Rs. 59,273/-.

10. In the result, the OA is allowed. The respondents are directed to refund the recovered amount of Rs. 20,000 + 4649. ¹/₂ They are further directed to finally fix the pensionary benefits on the basis of salary which the applicant was actually drawing at the time of retirement and to pay to the applicant the arrears of pension within a period of three months from the date of receipt of copy of this order. No case for payment of interest has been made out. No order as to the costs.


[Sadhna Srivastava] M [J]

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